In the High Court of Uttaranchal, at Nainital.

Criminal Misc. Application No. 281/2003

Smt. Vimla Devi W/o late Sri Buddhi
Prakash Farasi R/o Gali No.3,
Saket Colony, Ajabpur Kalan,
Dehradun ... Petitioner.

Versus

1- State of Uttaranchal

2- Km. Vijeeta Farasi D/o late Buddhi
Prakash Farasi, R/o Jogiwala Chowk
P.S. Clementown
Dehradun .. Respondents.

Sri Sandeep Tandon, learned counsel for the petitioner.
Sri Lokendra Dobhal, learned counsel for the respondent No. 3.
Learned A.G.A. for the State.

Hon'ble B.C. Kandpal, J.

By way of this petition U/S 482 Cr.P.C. the petitioner has challenged the summoning order as well the entire proceedings of the criminal case No. 1886 of 2002, Km. Vijeeta Vs. Vimla Devi, 406 I.P.C. pending before Special Magistrate, C.B.I., Dehradun.

2- Brief facts of the case are that a complaint was filed by Km. Vijeeta Farasi against her mother Smt. Vimla Devi on the ground tat the father of the complainant Buddhi Prakash Farasi was a Freedom Fighter and he executed a will in his life time. According to the will the pension of Freedom Fighter would be divided into three parts, one part for the widow of the deceased and two parts for his unmarried daughters, including the complainant. The averment made in the complaint is that the petitioner Smt. Vimla Devi has withdrawn the

entire family pension and has not distributed the same into three parts, hence she committed an offence U/S 406 I.P.C. The trial court, after having perused the material on record and hearing the parties, was pleased to summon the petitioner U/S 406 I.P.C.

3- A revision was preferred against the summoning order and the same was dismissed by the revisional court. Thus, the petitioner has challenged the summoning order as well as the entire criminal proceedings of the case, by way of this petition.

4- The counter affidavit has been filed by Km. Vijeeta Farasi denying the allegations made in the petition. It has been pleaded in the counter affidavit that in view of the provisions of Rule 3(5) of the "Swatantrata Sangram Sainaniyon Aur Unke Parivaron Ko Diye Jane Wale Anudan Tatha Swatantrata Sangram Pension Sambandhi Niyamawali," the respondent No.2, being the daughter of late Buddhi Prakash Farasi, is entitled to 1/3rd amount of the pension. She has also pleaded that in view of the will, executed by her father, the accused-petitioner had to divide the pension in three parts, one for herself, and two for the unmarried daughters, including the respondent Km. Vijeeta Farasi.

5- Heard the learned counsel for the parties and perused the record.

6. The arguments advanced by the learned counsel for the parties, relate with the disputed question of fact. The learned counsel for the petitioner has submitted that the provisions of

Rule 3 (5) of the aforesaid Rules, are not applicable in this case. He has submitted that in fact as per the provisions of Rule 5 (Ka) the respondent Km. Vijeeta Farasi and his sister are not entitled for any amount in the pension.

7- Since it is a disputed question of fact, which can be assessed and judged by the trial court, I am not supposed to embark upon an enquiry with regard to the credibility of the evidence.

8- Any judgment rendered by me would amount a premature judgment, where the evidence is still incompletely and bazy. It is the trial court to adjudicate the matter after the evidence is adduced before it.

9- I do not find any merit in this case. The petition is accordingly dismissed.

10- The interim order dated 2-12-2003 stands vacated.

(B.C. Kandpal, J.)

Dated: 22-08-2006
ISB